



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving a Rental Agreement Between the City of Lodi and Richard Mojica, dba Mojica's Batting Cages, for Use of 125 E. Elm Street, Unit D, Lodi

MEETING DATE: February 7, 2001

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That City Council approve the rental agreement for the above-mentioned use.

BACKGROUND INFORMATION: The City of Lodi purchased the property at 111 N. Stockton Street in September 2000. This property is comprised of one building divided into four units, two of which are used by the Parks and Recreation Department. Unit D faces Elm Street.

Richard Mojica was in a month-to-month rental agreement with the prior owner since February 1992. Staff recommends honoring his prior rental arrangement.

FUNDING: Revenue of \$700 per month for the term of the agreement.

Roger Baltz
Parks and Recreation Director

RB/sb

Attachment

cc: City Attorney

APPROVED: _____

H. Dixon Flynn -- City Manager

01/30/01

RENTAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2001 and Richard Mojica, dba Mojica's Batting Cages hereinafter called Tenant.

WITNESSETH:

1. **PROPERTIES:** That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Tenant, said Tenant does hereby rent from said Owner, 125 East Elm Street, Unit D, Lodi, California for the operation of Mojica's Batting Cages.
2. **TERM:** The term of this Rental Agreement shall be a month-to-month, commencing January 1, 2001 and terminating December 31, 2002. This Agreement may be extended by mutual agreement, and with City Council approval, for an additional term as specified.
3. **RENT:** In consideration of said Agreement, Tenant agrees to pay to Owner as rent for the demised premises \$700.00 per month, due and payable by the 1st day of each month. A late charge of \$60.00 may be assessed for any payment more than 10 days past due. Rental payments shall be directed to the City of Lodi, Attn: Parks & Recreation Department, 125 N. Stockton Street, Lodi, California, 95240, for processing and shall be paid without prior notice or demand.
4. **USE/USE PROHIBITED:** The property shall be used solely for the purpose of carrying on the business of Mojica's Batting Cages. Tenant shall not use any portion of the premises for purposes other than those specified, and no use shall be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property. Tenant shall not conduct or permit any sale by auction on the premises.
5. **ORDINANCES AND STATUTES:** It is further understood and agreed by Tenant that Tenant must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating this type of business during the tenancy and any extension thereof. Tenant shall use and occupy said premises in a quiet, lawful, and orderly manner. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the premises shall, at the option of the Owner, be deemed a breach hereof.
6. **SIGNS:** Owner reserves the exclusive right to the roof, side and rear walls of the Premises. Tenant shall not construct any projecting sign or awning without prior written consent of Owner which consent shall not be unreasonably withheld. It is agreed that Tenant will post "Hours of Operation" signs on the doors of the building. All signs and locations of signs must be approved by the City of Lodi Parks & Recreation Director. All costs associated with the purchase and installation of signs shall be the responsibility of Tenant.

7. **ABANDONMENT OF PREMISES:** Tenant shall not vacate or abandon the premises at any time during the term hereof, and if Tenant shall abandon or vacate the premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant left upon the premises shall be deemed to be abandoned, at the option of Owner.
8. **TRADE FIXTURES:** Any and all improvements made to the premises during the term hereof shall belong to the Owner, except trade fixtures of the Tenant. Tenant may, upon termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the premises occasioned by removal.
9. **DESTRUCTION OF PREMISES:** In the event of a partial destruction of the premises during the term hereof, from any cause, Owner shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing government laws and regulations, but such partial destruction shall not terminate this Agreement, except that Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the premises. If such repairs cannot be made within sixty (60) days, Owner, at his option, may make the same within a reasonable time, this Agreement continuing in effect with the rent proportionately abated as aforesaid, and in the event that Owner shall not elect to make such repairs which cannot be made within sixty (60) days, this Agreement may be terminated at the option of either party.

In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Owner may elect to terminate this Agreement whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this Rental Agreement.

In the event of any dispute between Owner and Tenant with respect to the provisions hereof, the matter shall be settled by arbitration in such a manner as the parties may agree upon, or if they cannot agree, in accordance with the rules of the American Arbitration Association.

10. **INSOLVENCY:** In the event a receiver is appointed to take over the business of Tenant, or in the event Tenant makes a general assignment for the benefit of creditors, or Tenant takes or suffers any action under any insolvency or bankruptcy act, the same shall constitute breach of this Agreement by Tenant.
11. **REMEDIES OF OWNER ON DEFAULT:** In the event of any breach of this Agreement by Tenant, Owner may, at his option, terminate the Rental Agreement and recover from Tenant: (a) the worth at the time of award of the unpaid rent which was earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the

amount of such rental loss that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Owner for all detriment proximately caused by Tenant's failure to perform his obligations under the Rental Agreement or which in the ordinary course of things would be likely to result therefrom.

Owner may, in the alternative, continue this Agreement in effect, as long as Owner does not terminate Tenant's right to possession, and Owner may enforce all his rights and remedies under the Rental Agreement, including the right to recover the rent as it becomes due under the Rental Agreement. If such breach continues, Owner may, at any time thereafter, elect to terminate the Rental Agreement.

Nothing contained herein shall be deemed to limit any other rights or remedies which Owner may have.

12. RELATIONSHIP OF PARTIES: It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Owner. Tenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers.
13. BUILDING MAINTENANCE: Building Maintenance (Janitorial Services) shall be the responsibility of Tenant.
14. ASSIGNMENT AND SUBLETTING: Tenant shall not assign this Agreement or sublet any portion of the premises without prior written consent of the Owner, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Owner, may terminate this Agreement.
15. ENTRY AND INSPECTION: Tenant shall permit Owner or Owner's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same.
16. MAINTENANCE, REPAIRS, ALTERATIONS OR ADDITIONS: Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and' common areas which shall be maintained by Owner. No repairs, alterations or additions to the premises shall be made without prior written consent of Owner. Prior to the commencement of any substantial repair, improvement, or alteration, Tenant shall give Owner at least two (2) days written notice in order that Owner may post appropriate notices to avoid any liability for liens. Tenant shall not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building. Any concerns shall be submitted in writing to the Parks & Recreation Director, City of Lodi, P. O. Box 3006, Lodi, CA 95241.
17. SURRENDER OF PREMISES: Tenant shall, at the termination of the Agreement hereby created, or upon the earlier termination hereof for any reason, or upon the

extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.

18. **FEES:** Tenant shall pay all license fees, or other fees or taxes, including possessory interest taxes, levied by any governmental agency which may be imposed upon the business of Tenant or its subtenant conducted upon the premises.

If any of the above charges are assessed against the real property, and because of said assessment, the Owner pays the same, which Owner will have the right to do regardless of the validity of any such levy, the Tenant, upon demand, will repay to Owner all taxes and other assessments so levied against Owner which are due by the Tenant.

19. **UTILITIES:** Tenant agrees that he shall be responsible for the payment of all utilities, including water, gas, electricity, heat and other services delivered to the premises. During the term of this Agreement, and any extension thereof, it is understood and agreed by the parties hereto that Tenant shall be responsible for the installation, maintenance and cost of any telephone lines that are required to operate their business, at no cost to the Owner.
20. **MECHANIC'S LIEN:** Tenant agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Tenant shall not create, or suffer to be created, any lien or encumbrance on said premises.
21. **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:** Tenant, at his expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Tenant and Owner with minimum coverage of \$1,000,000 each occurrence. More particularly described as follows:

Tenant agrees to indemnify and save harmless Owner from and against all claims of whatever nature arising from any act, omission, or negligence of Tenant or Tenant's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Tenant or Tenant's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Tenant agrees to maintain in full force during the term hereof a policy of public liability insurance under which Tenant is named as insured, and containing an additional named insured endorsement naming Owner as an additional insured, and under which the insurer agrees to indemnify and hold Tenant and Owner harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on

the part of Tenant, or Tenant's agents or employees. The minimum limits of such insurance shall be \$1,000,000.00 (One Million Dollars). In addition to the additional named insured endorsement on Owner's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

To the maximum extent permitted by insurance policies which may be owned by Owner or Tenant, Owner and Tenant, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Owner within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Agreement, shall apply and be construed as applying to any subtenant of Tenant.

22. **BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY:** If Tenant should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of the premises, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Owner may, without notice or demand, terminate this Agreement and forthwith reenter and repossess the properties, and remove all persons therefrom, and under no circumstances shall this Agreement be assignable or transferable by operation of law.
23. **ATTORNEY'S FEES:** In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.
24. **WAIVER:** Failure of Owner to insist upon performance of any of the terms or conditions of this Agreement in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Tenant's obligations to such future performance shall continue in full force and effect. The receipt by Owner of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.

25. **NOTICES:** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at the premises, or Owner at the address shown below, or at such other places as may be designated by the parties from time to time.

OWNER:

Parks & Recreation Director
City of Lodi
P. O. Box 3006
Lodi, California 95241

TENANT:

Richard Mojica and
Teresa E. Mojica
dba Mojica's Batting Cages
125 East Elm Street
Lodi, California 95240

26. **HOLDING OVER:** Any holding over after the expiration of this Agreement, with the consent of Owner, shall be construed as a month-to-month tenancy at a rental of \$1,300.00 per month, otherwise in accordance with the terms hereof, as applicable.
27. **TIME:** Time is of the essence of this Rental Agreement.
28. **HEIR, ASSIGNS, SUCCESSORS:** This Rental Agreement is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.
29. **COST OF LIVING INCREASE:** The rent provided for in paragraph 2 shall be adjusted effective upon the first day of the month immediately following the expiration of 12 months from date of commencement of the term and upon the expiration of each 12 months thereafter in accordance with changes in the U. S. Consumer Price Index for All Urban Consumers (1982-84 = 100) hereinafter called the "CPI." The monthly rent shall be increased to an amount equal to the monthly rent set forth in paragraph 2 multiplied by a fraction the numerator of which is the CPI for the second calendar month immediately preceding the adjustment date and the denominator of which is the CPI for the second calendar month preceding the commencement of the Agreement term. Provided, however, in no event shall the monthly rent be less than the amount set forth in paragraph 2.
30. **OPTION TO RENEW:** Provided that Tenant is not in default in the performance of this Rental Agreement, Tenant shall have the option to renew the Rental Agreement for an additional one year month-to-month term, commencing at the expiration of the initial Rental Agreement term. All of the terms and conditions of the Rental Agreement shall apply during the renewal term except that the monthly rent shall be the sum of \$see paragraph 29 which shall be adjusted in accordance with the cost of living increase provision set forth in paragraph 29.
- The option shall be exercised by written notice given to Owner not less than sixty (60) days prior to the expiration of the initial Rental Agreement term. If notice is not given in the manner provided herein within the time specified, this option shall expire.
31. **OWNER'S LIABILITY:** The term "Owner" as used in this paragraph, shall mean only the owner of the real property. In the event of any transfer of such title or interest, the Owner named herein (or the grantor in case of any subsequent transfers) shall be

relieved of all liability related to Owner's obligations to be performed after such transfer. Provided, however, that any funds in the hands of Owner or Grantor at the time of such transfer shall be delivered to Grantee. Owner's aforesaid obligations shall be binding upon Owner's successor's and assigns only during their respective periods of ownership.

32. ACCEPTANCE OF PREMISES: Tenant has examined the premises, knows the conditions thereof, and accepts possession thereof in their condition.
33. CONTRACT: This written agreement constitutes the entire contract between the Tenant and Owner, and no representation or agreement, unless expressed herein, shall be binding on the Tenant or Owner.

IN WITNESS WHEREOF, Owner and Tenant have executed this Agreement on the date and year first above written.

CITY OF LODI, a municipal corporation
Hereinabove called "Owner"

Richard Mojica and Teresa E. Mojica
dba Mojica's Batting Cages
hereinabove called "Tenant"

By _____
H. DIXON FLYNN, City Manager

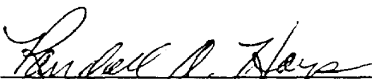
By _____
RICHARD MOJICA
511 E. Sonora Avenue
Lodi, California 95240

Attest:

SUSAN J. BLACKSTON, City Clerk

By _____
TERESA E. MOJICA

Approved as to Form:



RANDALL A. HAYS, City Attorney

RESOLUTION NO. 2001-28

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
RENTAL AGREEMENT BETWEEN THE CITY OF LODI AND
RICHARD & TERESA MOJICA, dba MOJICA'S BATTING CAGES,
FOR USE OF 125 E. ELM STREET, UNIT D, AND FURTHER
AUTHORIZING THE CITY MANAGER TO EXECUTE
AGREEMENT ON BEHALF OF THE CITY OF LODI

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NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council hereby
approves the Rental Agreement between the City of Lodi and Richard & Teresa Mojica,
dba Mojica's Batting Cages, for use of 125 E. Elm Street, Unit D; and

BE IT FURTHER RESOLVED, that the term of the Agreement shall be a month-
to-month rental commencing January 1, 2001 and terminating December 31, 2002; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to
execute said agreement on behalf of the City of Lodi.

Dated: February 7, 2001

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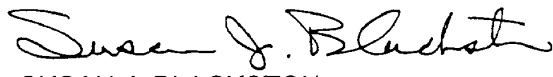
I hereby certify that Resolution No. 2001-28 was passed and adopted by the Lodi
City Council in a regular meeting held February 7, 2001 by the following vote:

AYES: COUNCIL MEMBERS -- Hitchcock, Howard, Land and Pennino

NOES: COUNCIL MEMBERS -- None

ABSENT: COUNCIL MEMBERS -- Mayor Nakanishi

ABSTAIN: COUNCIL MEMBERS -- None


SUSAN J. BLACKSTON
City Clerk